

Sexual Harassment

I. Legal Basis

- A. 14th Amendment of the U.S. Constitution – guarantees all persons equal protections under the law. In 1873 the Supreme Court interpreted the 14th Amendment as applying only to racial discrimination.
- B. Title VII of the Civil Rights Act – prohibits employers from discriminating against anyone because of their race, gender, disability, etc.
- C. Title IX of the Education Amendments of 1972 – prohibits discrimination based on a student's sex in schools and colleges receiving federal funds.

Every individual has the legal right to work in an environment free of sexual harassment.

II. Defining Sexual Harassment

- A. The Equal Employment Opportunity Commission (EEOC) guidelines define sexual harassment as “unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:”
 - i. Submission to or rejection of such conduct is used as a basis of employment decisions affecting the employee – **Quid Pro Quo**. Quid Pro Quo – is a Latin term that means “this for that” – requesting or offering or a sexual favor for an employment gain. Quid Pro Quo must involve someone in a position of power who has the authority to reward the individual i.e., supervisor, teacher, coach, etc.
 - ii. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or of creating a hostile, intimidating or offensive work environment – **Hostile Environment**. Hostile Environment
- B. Types of Sexual Harassment Behavior – include but are not limited to:
 - i. Verbal – lewd, sexually suggestive or gender-related comments, profanity use of sexual terms in a demeaning manner, sexual innuendo, off-color jokes, etc.
 - ii. Physical – contact, touching or gesturing that have sexual overtones, assault or molestation
 - iii. Visual – sexually-related or obscene photos, drawings, posters, calendars, ogling, and graffiti
- C. The criteria used by the courts to determine the commission or presence of sexual harassment include **frequency, severity, level of threat or humiliation and the impact upon the work place.**

- III. Proactive Measures
 - A. Communicate expectations
 - B. Follow district policy and procedures
 - C. Implement a training program and conduct training on a regular basis
 - D. Monitor the environment
 - E. Address an issue before it becomes a claim
- IV. Employer Responsibilities in Addressing Claims of Sexual Harassment
 - A. Prompt and adequate response to notice of harassment
 - i. Conduct a thorough and objective investigation.
 - ii. Engage a serious effort to stop harassment.
 - iii. Document interviews, information, actions, and results
 - iv. Inform the employee who filed the complaint of the outcome of the investigation; reiterate the employer's strong opposition to such behavior; urge the employee to immediately report reoccurrence or retaliation.
 - v. Monitor efforts.
- V. Employer / Employee Liability
 - A. Employers have strict liability in Quid Pro Quo cases; employers may be found liable in Hostile Environment cases depending upon the circumstances of the situation, the employer's knowledge of the behaviors and its response to complaints of harassment. Its costs and consequences may include settlements (many are in the six and seven figure range), fines and penalties, defense costs, loss of productivity, low employee morale.
 - B. Employees may face criminal and civil charges and may be responsible for assessed fines, penalties, settlements and defense costs. Employees may also be subject to disciplinary action up to and including termination of employment.

Sexual Harassment Quiz

1. Teasing of a female employee in a male dominated work area is considered sexual harassment.
True False
2. Sexual harassment laws only apply to female employees.
True False
3. Sexually oriented poster and objects are OK in the workplace if no one complains.
True False
4. The majority of sexual harassment is done by males to females.
True False
5. Gender-biased work assignments are ok, i.e., women run the Sunshine club; men kill the spiders.
True False
6. An employer can be held liable for the sexually harassing behavior of its supervisors even if there is a policy forbidding such behavior and it's not aware of the harassing behavior.
True False
7. The sexual harasser cannot be held personally liable for any part of a judgment in a sexual harassment case.
True False
8. Unwanted sexual attention will usually go away if it is ignored.
True False
9. Employees have the right to say anything they want and are protected by the First Amendment, which protects the right of free speech.
True False
10. The first sexual harassment case was heard in trial court in what year?
A. 1989 B. 1977 C. 1969 D. 1950
11. What famous case brought sexual harassment in the workplace to the public eye?
12. All employees have a right to work in an environment free of sexual harassment.
True False